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VOLUME XIII

SPECIAL ISSUE

PART FOUR

Introduction*

The New York Law School Moot Court Association is a student honor society composed during the 1996-97 academic year of seventeen executive board members and almost fifty additional members. The Association sponsors the Charles W. Froessel Constitutional Law Intramural Moot Court Competition and the Robert F. Wagner Sr. National Labor Law Moot Court Competition. In addition, members of the Moot Court Association compete annually in over one dozen national intermural moot court competitions.

The materials contained in this Special Issue of the *New York Law School Journal of Human Rights* are the competition records from the Froessel and Wagner Competitions held at New York Law School in 1996 and 1997 respectively. Competition materials include a fact pattern, bench brief, competitors' briefs, and oral argument transcript.

* By Robert J. Shaw, Executive Editor, Moot Court Association. I would like to express my deepest thanks to the editorial staff of the *New York Law School Journal of Human Rights* and the executive board and members of the New York Law School Moot Court Association for their tireless efforts in publishing this Special Issue. Specifically, I would like to thank Will Hauptman, Marna Albanese, Brian Lansbury, Pamela Arnsten, and Professor Nadine Strossen for their extraordinary support of this new endeavor.

The fact pattern is provided to student competitors at the beginning of each competition. It is from this fact pattern that the students, in teams of two or three, conduct research for the problem and write their competition appellate briefs. The bench brief is provided to those who participate as judges in the competition. The bench brief is designed to provide the reader with background information regarding the facts of the competition and the issues raised. The fact patterns and bench briefs, written by members of the executive board of the Association, are contained this Special Issue.

This Special Issue also contains the briefs that were awarded Best Petitioner and Best Respondent Briefs for both the Froessel and Wagner Competitions as well as the transcript from the Wagner Competition final round oral arguments before a "moot" Supreme Court.

*The Charles W. Froessel
Constitutional Law Intramural Moot Court Competition*

Charles William Froessel, New York Law School Class of 1913, is best remembered by the legal community for his tenure as an associate judge on the New York Court of Appeals from 1949 to 1962. In 1951, he wrote an opinion in which he stated that prayer in public school is unconstitutional.¹ Eleven years later, the United States Supreme Court ruled that organized prayer in public school is unconstitutional.²

Before his service on the Court of Appeals, Judge Froessel was an assistant district attorney in Queens County and a special assistant to the United States Attorney General in charge of slum clearance. After his retirement from the bench, Judge Froessel became the chairman of New York Law School's board of trustees. Judge Froessel also served briefly as the school's acting dean.

¹ *Zorach v. Clauson*, 303 N.Y. 161 (1951).

² *Engel v. Vitale*, 370 U.S. 421 (1962).

Over one hundred New York Law School students competed in the 20th Annual Froessel Competition. This competition (and, in earlier years, the John Marshall Harlan Competition³) determines who will become candidates for membership in the Moot Court Association. This year's problem examined two compelling constitutional law issues. The first issue addressed what is the appropriate standard of review under the Equal Protection Clause of the Fourteenth Amendment for a state statute that restricts marriage to opposite-sex couples. The second issue addressed whether a liberty interest exists in assisted suicide and, if so, whether that interest outweighs the state's interests.

The judges of the Final Round Oral Arguments for the Froessel Competition were the Honorable Antonin Scalia, Associate Justice of the United States Supreme Court; the Honorable Frederic S. Berman, Justice of New York State Supreme Court; Karen Burstein, former Judge of the New York State Family Court and former New York State Senator; the Honorable John E. Sprizzo, Judge of the United States District Court for the Southern District of New York; Nadine Strossen, New York Law School Professor and President of the American Civil Liberties Union; the Honorable Ellsworth A. Van Graafeiland, Senior Judge of the United States Court of Appeals for the Second Circuit; and Harry H. Wellington, Dean of New York Law School.

*The Robert F. Wagner Sr.
National Labor Law Moot Court Competition*

The Wagner Competition was established in memory of Robert F. Wagner Sr., New York Law School Class of 1900 and United States Senator from New York. Senator Wagner's greatest achievement was

³ The Association previously conducted a mid-year competition, in addition to the Froessel Competition, to determine membership. The competition was established in memory of John Marshall Harlan II, Associate Justice of the United States Supreme Court, 1955 to 1971, and New York Law School alumnus, Class of 1924.

to sponsor the National Labor Relations Act.⁴ During his career in politics, which began in 1904, Senator Wagner worked tirelessly to pass legislation to control unemployment, improve labor standards, and prevent unfair competitive practices.

Now in its twenty-first year, the Wagner Competition is the nation's largest non-corporate-sponsored, student-run competition. This year's problem examined two current issues in labor relations and employment law. The first addressed the enforceability of a union's agreement to submit statutory employment discrimination claims to binding arbitration. The second addressed whether disparate impact liability should be recognized under the Age Discrimination in Employment Act.⁵

The following forty-three schools from around the country competed in this year's Wagner Competition: Albany Law School, University of Baltimore Law School, Boston University Law School, Brooklyn Law School, Capital University Law School, City University of New York School of Law, DePaul University College of Law, Detroit College of Law at Michigan State University, Dickinson School of Law, Florida State University College of Law, Georgia State University College of Law, George Washington University School of Law, Georgetown University Law Center, Hofstra University School of Law, Loyola University—Chicago School of Law, John Marshall Law School, Marshall Wythe School of Law—The College of William and Mary, Mercer University School of Law, New York University School of Law, Northeastern University School of Law, Ohio State University College of Law, Pepperdine University School of Law, Rutgers School of Law—Camden, St. John's University Law School, St. Thomas University Law School, Southern Methodist University School of Law, Stetson University College of Law, Syracuse University College of Law, Temple University School of Law, University of Buffalo School of Law,

⁴ 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1994)).

⁵ 81 Stat. 602 (1967) (codified as amended at 29 U.S.C. §§ 621-634 (1994)).

University of California Hastings College of Law, University of Cincinnati College of Law, University of Connecticut School of Law, University of Detroit Mercy School of Law, University of Louisville School of Law, University of Memphis School of Law, University of Minnesota Law School, University of Pittsburgh School of Law, University of Southern California Law School, University of Texas School of Law, University of Wisconsin Law School, Willamette University College of Law, and Wake Forest University School of Law.

The judges of the Final Round Oral Arguments for the Wagner Competition were Charles I. Cohen, Partner, Morgan, Lewis & Bockius and former Member, National Labor Relations Board; Sarah Fox, Member, National Labor Relations Board; Spencer H. Lewis, District Director, U.S. Equal Employment Opportunity Commission; John Neil Raudabaugh, Partner, Matkov, Salzman, Madoff & Gunn and former Member, National Labor Relations Board; Daniel Silverman, Regional Director, National Labor Relations Board; and John C. Truesdale, former Member, National Labor Relations Board.

The 1996-97 Moot Court Association Advisors were Professors Gerald Lebovits and Laura Stein. Professor Lebovits has been the Association's faculty advisor for seven years. Professor Stein has been an advisor to the Wagner Competition for three years. The Association is grateful for their commitment, and that of numerous other faculty members, which, in large measure, has led to the Association's success.

The Association also receives significant support from its alumni and other attorneys and judges throughout the New York metropolitan area. These dedicated individuals volunteer many hours judging the competitions each year. The Association is grateful to these individuals for their continued commitment to appellate advocacy.

For the first time, the Association is publishing its competition materials to provide instruction to students and practicing attorneys in appellate advocacy. The Association believes that readers will find these materials helpful, not only in preparing for and understanding appellate advocacy, but also the profound issues presented in these competitions.

